



Press Release

National Labor Relations Board

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NLRB Member Peter Schaumber statement on Supreme Court ruling and chronic vacancies at the Board

National Labor Relations Board Member Peter Schaumber issued the following statement in response to the June 17 Supreme Court decision that the two-member Board was not authorized to issue decisions during the 27 months it operated:

In early 2008, then-Board Member Liebman and I made the decision to continue issuing decisions as a two-member quorum of a former three-member Board. Last week, the Supreme Court ruled against the Board requiring that the decisions we issued be set aside.

The Court's decision and the litigation preceding it has had the benefit of drawing public attention to the problem of Board member vacancies. The absence for long periods of time of a confirmed five-member Board prevents the Board from effectively performing its statutory duties. Even though Chairman Liebman and I were able to reach agreement in nearly 90% of the cases presented to us for decision, the Board's major cases – those that establish new Board law or reverse prior precedent – were left undecided. This was so because the Board by practice and tradition does not establish new law or reverse prior precedent without three affirmative votes and typically does so only when there is a Board of four or five members

The Act contemplated the nomination and confirmation of one Board member each year as a term expired. The practice has developed in recent years, however, of packaging nominees for two or more vacancies and of using short-term recess appointments to fill in while the package is nominated and confirmed. The result is a merry-go-round in Board appointments with resulting delays in the issuance of the Board's most significant cases.

Today's Senate confirmation of two long-pending nominees to the Board, while welcome, does not change the fundamental problem that exists. We are a full board now,

but it is only for a short time as my term expires this August and the Chairman's term expires the following year.

The Court's decision and the events that precipitated it call for reconsidering the entire process for the selection of Board members, the wisdom of packaging Board nominees and the impact of that practice on the Act's promise of a National Labor Relations Board composed of "impartial government employees."

The National Labor Relations Board is an independent federal agency vested with the power to safeguard employees' rights to organize and to determine whether to have unions as their bargaining representative. The agency also acts to prevent and remedy unfair labor practices committed by private sector employers and unions.

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